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WRH Mechanical, Inc. and North Star Heating & Air Conditioning *and* Sheet Metal Workers International Association Local Union No. 85, AFL— CIO. Case 10–CA–31172

March 31, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND BRAME

Upon a charge filed by the Union on August 26, 1998, the General Counsel of the National Labor Relations Board issued a complaint on January 29, 1999, against WRH Mechanical, Inc. (WRH) and North Star Heating & Air Conditioning (North Star), collectively referred to as the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On March 5, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On March 10, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated February 18, 1999, notified the Respondent that unless an answer were received by February 25, 1999, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, WRH and North Star have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy affecting employees of the operations; have shared common premises and facilities; and have interchanged personnel with each other. At all material times, WRH, a Georgia corporation, with an office and place of business located in Snellville, Georgia, has been engaged in the installation of commercial heating, ventilation, and airconditioning systems. At all material times, North Star, a Georgia corporation, with an office and place of business located in Snellville, Georgia, has been engaged in the installation of commercial and residential heating, ventilation, and air-conditioning systems. By virtue of their operations described above, WRH and North Star constitute a single integrated business enterprise and are a single employer within the meaning of the Act.

During the 12-month period preceding the issuance of the complaint, WRH and North Star, in the course and conduct of their operations, have purchased at their Snellville, Georgia location goods, products, and materials valued in excess of \$50,000 directly from suppliers located outside the State of Georgia.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent and the Union are parties to a collective-bargaining agreement effective August 1, 1997, to July 31, 2000, encompassing, inter alia, rates of pay, wages, hours of employment, and other terms and conditions of employment of certain employees.

All employees of the Respondent performing the work described in article 1, section 1, of the collective-bargaining agreement referred to above, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

At all material times, the Union, by virtue of Section 9(a) of the Act has been, and is, the exclusive representative of the employees in the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On or about February 26, 1998, the Respondent laid off its employee Onnie Rubbin Mosley.

The Respondent engaged in the described above, in furtherance of its plan to rid its workforce of union members so as to repudiate its collective-bargaining relationship with the Union.

Since about February 26, 1998, the Respondent has repudiated and failed to honor the terms of the collective-

¹ The General Counsel's motion indicates that the charge was served by registered mail to the Respondent's last known address and was not returned by the Postal Service. The failure of communications sent by ordinary mail to be returned to the Regional Office by the Postal Service indicates actual service. *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987).

bargaining agreement and imposed terms and conditions of employment which are inconsistent with the terms of that agreement.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been discriminating in regard to the hire, or tenure, or terms and conditions of employment of employees and has failed and refused to bargain collectively and in good faith with the representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by laying off Onnie Rubbin Mosley, we shall order the Respondent to offer the discriminatee full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with F. W. Woolworth Co., 90 NLRB 289 (1950), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful discharges, and to notify the discriminatee in writing that this has been done.

Furthermore, specifically having found that the Respondent violated Section 8(a)(5) and (1) by repudiating and failing to honor the terms of the 1997-2000 agreement and imposing terms and conditions of employment which are inconsistent with the terms of the agreement, we shall order the Respondent to recognize and, on request, bargain with the Union, and to comply with all the terms of 1997-2000 agreement with the Union. The Respondent shall also make whole its unit employees by providing all contractual benefits and making contractually required benefit payments or contributions, including any additional amounts applicable to such delinquent payments as determined pursuant to Merryweather Optical Co., 240 NLRB 1213, 1216 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments or contributions, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2. (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in Ogle Protection Service, 183 NLRB 632 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in New Horizons for the Retarded, supra.²

ORDER

The National Labor Relations Board orders that the Respondent, WRH Mechanical, Inc. and North Star Heating & Air Conditioning, Snellville, Georgia, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Laying off employees in furtherance of its plan to rid its work force of union members so as to repudiate the collective-bargaining relationship between the Respondent and Sheet Metal Workers International Association Local Union No. 85, AFL–CIO, which is the exclusive bargaining representative of the employees in the unit
- (b) Failing and refusing to recognize and bargain with the Union, by repudiating and failing to honor the terms of the 1997–2000 collective-bargaining agreement, and imposing terms and conditions of employment which are inconsistent with the terms of that agreement.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Within 14 days from the date of this Order, offer Onnie Rubbin Mosley immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
- (b) Make Onnie Rubbin Mosley whole for any loss of earnings or other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of this decision.
- (c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoff of Onnie Rubbin Mosley, and within 3 days thereafter notify him in writing that this has been done and that the layoff will not be used against him in any way.
- (d) Comply with the terms and conditions of the 1997–2000 agreement by making all contractually required payments or contributions and make whole the unit employees for any loss of benefits or expenses ensuing from its failure, since February 26, 1998, to provide these benefits, with interest, as set forth in the remedy section of this decision.

² To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the respondent otherwise owes the fund.

- (e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.
- (f) Within 14 days after service by the Region, post at its facility in Snellville, Georgia, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 26, 1998.
- (g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 31, 1999

John C. Truesdale,	Chairman
Peter J. Hurtgen,	Member
J. Robert Brame III,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT lay off employees in furtherance of our plan to rid our work force of union members so as to repudiate the collective-bargaining relationship between us and Sheet Metal Workers International Association Local Union No. 85, AFL—CIO, which is the exclusive bargaining representative of the employees in the unit.

WE WILL NOT fail and refuse to recognize and bargain with the Union, by repudiating and failing to honor the terms of the 1997–2000 collective-bargaining agreement, and imposing terms and conditions of employment which are inconsistent with the terms of that agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Onnie Rubbin Mosley immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Onnie Rubbin Mosley whole for any loss of earnings or other benefits suffered as a result of the discrimination against him, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful lay-off of Onnie Rubbin Mosley, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the layoff will not be used against him in any way.

WE WILL comply with the terms and conditions of the 1997–2000 agreement by making all contractually required payments or contributions retroactive to February 26, 1998, and WE WILL make whole the unit employees for any loss of benefits or expenses ensuing from our failure, since February 26, 1998, to provide these benefits, with interest.

WRH MECHANICAL, INC. AND NORTH STAR HEATING & AIR CONDITIONING

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."